



FOREST PRACTICE COMMITTEE

PROBLEM STATEMENT:

“Cumulative Impacts Assessment”

June 16, 2014

BACKGROUND

The Board of Forestry first considered adoption of 14 CCR 912.9, 932.9, 952.9 in 1990. This was in response to a number of lawsuits that had been filed against the Board through the 1980s challenging the Timber Harvesting Plan (THP) process as functionally equivalent to the California Environmental Quality Act (CEQA)¹. The courts generally upheld the THP process as functionally equivalent, but found that the evaluations of individual THP's, in some cases, had failed to meet the broad policy standards of CEQA. The first attempt to adopt these regulations in 1990 was rejected by the Office of Administrative Law (OAL). After addressing OAL's concerns and the addition of Technical Rule Addendum #2, these regulations were adopted in 1991 and remain in effect today.

PUBLIC/RESOURCE PROBLEM TO BE ADDRESSED

The regulation of timber harvesting operations by the California Department of Forestry and Fire Protection (Cal Fire) and the State Board of Forestry and Fire Protection (BOF) are certified by the Secretary for Resources as a certified program meeting the requirements of the CEQA process under Public Resources Code (PRC) section 21080.5. Timber harvesting plans are considered “functionally equivalent” to an environmental impact report (EIR) otherwise required under CEQA for projects that could potentially have significant effects on the environment. CEQA requires project proponents to disclose potential significant impacts and proposed to reviewing agencies and the public, and to provide mitigation measures to prevent significant, avoidable environmental damage.

The primary means for disclosing potential significant impacts in timber harvesting plans is through addressing 14 CCR 912.9, 932.9, 952.9. Guidance is given in Technical Rule Addendum No. 2 to assist the Registered Professional Forester (RPF) in fully addressing the potential cumulative impacts that may occur as a result of timber harvesting. Additionally, Cal Fire provided a document titled “Timber Harvesting Plan Form Instructions and Information” in January of 2000², and a memo from Bill Snyder on August 2, 2004³ that help clarify the expectations of the RPF to address cumulative impacts.

¹ <http://gov.uchastings.edu/public-law/docs/plri/caselaw.pdf>, accessed 5/20/14.

² http://calfire.ca.gov/resource_mgt/downloads/THPINST0100.pdf, accessed 5/20/14.

In reviewing timber harvesting plans for potential significant impacts, Cal Fire requires enough detailed information from RPFs to make a determination on both the incremental effect of the proposed operations, and the cumulative effect of the proposed operations when taken in consideration with closely related past, current, and reasonably foreseeable probable future projects (CEQA Guidelines Section 15355). The evaluation of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency. Since an effect's significance varies with the projects timing, scope, and setting, a clear line does not always exist between significant and less than significant effects (CEQA Statutes Section 15064). The effects of any proposed harvesting are influenced by site specific conditions such as the public trust values present (watershed, wildlife, recreation, etc), the geographic setting (geology, topography, etc), the silvicultural requirements of the managed tree species, and the location of physical improvements (roads, landings, skid trails, etc). This requires a determination be made by the lead agency based on the totality of the evidence presented by the project proponent, public comment, and agency local expertise.

There have been a number of changes to the CEQA Guidelines dealing with cumulative impacts (Section 15130) since the Board adopted 14 CCR 912.9, 932.9, and 952.9 and Technical Rule Addendum No. 2 in 1991. Most significantly is the inclusion of an analysis of a projects contribution to greenhouse gas (GHG) emissions in 2009⁴ pursuant to passage of SB 97. Technical Rule Addendum No. 2 currently does not offer any guidance on addressing GHG emissions. The department does provide a THP GHG emissions calculator and user guide on its' resource management memorandum webpage⁵ for use by plan submitters.

OPTIONS TO ADDRESS PROBLEM

- **Take No Action**

Under this option the Board would retain 14 CCR 912.9, 932.9, and 952.9, and Technical Rule Addendum No. 2 in their current form. CEQA does not prescribe a specific method for assessing the GHG emissions from proposed projects. The lead agency has discretion to either use a model or methodology to quantify these emissions or rely on a qualitative analysis or performance based standards⁴.

Under current rules RPFs use a number of different analytical tools to address GHG emissions. These are addressed in the cumulative impact assessment by utilizing the "other" category of 14 CCR 912.9, 932.9, and 952.9(3).

³ http://calfire.ca.gov/resource_mgt/downloads/SupplnstcompTHPmemo8_2_04.pdf, accessed 5/20/14.

⁴ http://resources.ca.gov/ceqa/docs/Initial_Statement_of_Reasons.pdf, accessed 5/20/14.

⁵ http://calfire.ca.gov/resource_mgt/resource_mgt_forestpractice_pubsmemos_memos.php, accessed 5/20/14.

- **Review and Consideration of Forest Practice Rule Amendments**

Under this option the Board would review the changes to CEQA interpretations regarding cumulative impacts that have occurred since implementation of 14 CCR 912.9, 932.9, and 952.9, and Technical Rule Addendum No. 2. The Board could propose amendments to this and other rule sections within the limits of its' statutory authority in inconsistencies are identified.

Evaluation of GHG emissions could be added to the 14 CCR 912.9, 932.9, and 952.9(3) checklist and guidance for addressing these could be added to Technical Rule Addendum No. 2. This could bring greater clarity to RPFs addressing GHG emissions in proposed timber operations, and greater uniformity to Cal Fire's evaluation of these assessments.

- **Publish a Memorandum Addressing Cumulative Impacts in THPs**

Under this option the Board would produce a guidance document that RPF's could utilize when addressing cumulative impacts. Any changes in interpretation of the underlying CEQA statute that have occurred since passage of 14 CCR 912.9, 932.9 and 952.9 can be incorporated. The Board can also provide guidance on addressing GHG emissions relative to timber harvesting activities.

NEXT STEPS

Further Assessment of Problem Scope:

- Continue gathering information on the changes that have occurred to the cumulative impacts assessment under CEQA since adoption of 14 CCR 912.9, 932.9, and 952.9, including relevant court rulings.
- Query Cal Fire forest practice staff on any deficiencies in Cal Fire's ability to evaluate THPs due to lack of RPF guidance in addressing GHG emissions or other aspects of cumulative impacts assessments.
- Conduct public outreach to see if the public is receiving adequate information to evaluate the plan's potential cumulative impacts, including those from GHG emissions.

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